

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 284 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SHANKARJI VAJAJI VANZARA

Versus

STATE OF GUJARAT

Appearance:

MR JV JAPEE for Petitioner

MR MAULIN RAWAL ADDL PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 19/07/1999

ORAL JUDGEMENT

#. Heard Mr.J.V.Japee, learned advocate for the revisioner and Mr.Maulin Rawal for the respondent State.

#. Rule. Mr.Maulin Rawal, leaned APP waives service of rule on behalf of the respondent State.

#. Mr.Japee submitted that it is true that the revisioner was under order of externment and he had

committed a breach of the externment order, but the circumstances, which led to commission of breach were that he was out of the area externed from, for about 11 months. He suddenly received a message about his wife having fallen sick. He therefore, could not restrain himself and rushed to the place just to look after his wife and in that process, he was caught. Mr.Japee further submitted that the externment period was to expire just 1 month thereafter and for all 11 months, the revisioner has not committed any breach. The revisioner belongs to Vanzara community and he has undergone little education. Under these circumstances, the punishment inflicted upon him is very heavy. Mr.Japee placed reliance on a decision of Bombay High Court in the case of State of Maharashtra Vs. Asaram Maroti, reported in Cr.Ref.No. 24 of 62 dated 22-11-1962 - 1963 Mah. L.J. and submitted that this is a fit case where lesser punishment than prescribed could have been awarded by the trial Court.

#. Mr.Rawal has opposed this revision application strongly. He submits that law has prescribed minimum 6 months punishment and no case is made out for awarding lesser punishment. The man is in jail since 30th April, 1999 and the revision is therefore not entertainable.

#. Having considered the rival side contentions in light of the facts of the case and the decision relied upon by Mr.Japee, it appears that undisputedly the revisioner was under orders of externment for 1 year. He remained out of area externed from, for about 11 months and then he was caught. It is not the case of the prosecution that on earlier occasion he had ever committed any breach of externment order. The provisions of the Bombay Police Act, Section 142 prescribes minimum punishment of 6 months, however, lesser punishment can be awarded for the reasons to be recorded therefore. In this instant case, a case is made out that the revisioner has 4 children and aged mother of 80 years, who is handicapped. They are belonged to economical backward class. That the revisioner learnt about the sickness of his wife and was therefore extremely worried and anxious to know about her health and so he rushed to his wife.

#. The Bombay High Court decision relied upon by Mr.Japee, seems to be on facts very close to the facts of the present case. In that case a distinction was drawn between an externment order directing not to enter the area for which the accused is externed and an order directing not to return to the area for which accused is externed. The later was considered relatively lighter

and when the accused entered the area to take care of his ailing son, he was held to be not guilty of committing breach of externment order and was acquitted. In the matter before this Court as stated at Bar by learned APP that the order does not speak of "not to enter" the area but speaks of being externed from that area, which can be considered quite similar to 'not to return' area, contemplated in the said decision.

#. Keeping these peculiar facts of the present case in mind in light of the judgment of Bombay High Court in State of Maharashtra Vs. Asaram Maroti, (Supra), and considering that the revisioner is in jail since 30th April, 1999, the ends of justice will be met if the punishment is reduced to imprisonment already undergone by the revisioner. This case not to be treated as the precedent. The revision application is therefore allowed. The order of conviction is confirmed. The sentence is reduced to already undergone by the revisioner. The revisioner be set at liberty forthwith. Rule is made absolute.

Date : 19-7-1999 [A.L.Dave, J.]

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